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Attorneys for Defendant  
THE BURLINGTON INSURANCE  
COMPANY (erroneously sued as  
Burlington Insurance Company)

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JENNY WOLFES,  
Plaintiffs,  
vs.  
BURLINGTON INSURANCE  
COMPANY AND DOES 1 to 25,  
inclusive,  
Defendants.

) CASE NO. C07 04657 RMW

) **DEFENDANT THE BURLINGTON  
INSURANCE COMPANY'S REPLY  
TO JENNY WOLFES'  
OPPOSITION TO BURLINGTON'S  
MOTION TO STRIKE  
ALLEGATIONS OF AND PRAYER  
FOR PUNITIVE DAMAGES**

) Date: March 14, 2008  
Time: 9:00 a.m.  
Ctrm: 6

Defendant The Burlington Insurance Company hereby submits the following Reply to Jenny Wolfes' Opposition to Burlington's Motion to Strike Allegations of and Prayer for Punitive Damages.

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   For the reasons set forth more thoroughly in Burlington's moving papers,  
3 Plaintiff Jenny Wolfes' ("Wolfes") allegations of and prayer for punitive damages  
4 should be stricken. Moreover, it should be pointed out that Wolfes' prayers for  
5 punitive damages relate to its claims for bad faith and intentional infliction of  
6 emotional distress. These causes of action are the subject of Burlington's  
7 concurrently filed 12(b)(6) motion, also set to be heard on March 14, 2008. For  
8 the reasons set forth in the 12(b)(6) motion (and hereby incorporated by  
9 reference), Wolfes' claims should be dismissed. Consequently, Wolfes' prayers  
10 for punitive damages stemming from said claims also necessarily fail and should  
11 be dismissed.

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13 Dated: February 29, 2008

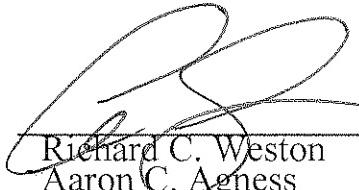
WESTON & McELVAIN LLP

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By:



Richard C. Weston  
Aaron C. Agness

17                   Attorneys for Defendant  
18                   THE BURLINGTON INSURANCE  
19                   COMPANY (erroneously sued as  
Burlington Insurance Company)

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DEFENDANT THE BURLINGTON INSURANCE COMPANY'S REPLY TO JENNY  
WOLFES' OPPOSITION TO BURLINGTON'S MOTION TO STRIKE ALLEGATIONS  
OF AND PRAYER FOR PUNITIVE DAMAGES

**PROOF OF SERVICE**

*Jenny Wolfes v. Burlington Insurance Company  
USDC, Northern District Case No.C07 00696*

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, 15<sup>th</sup> Floor, Los Angeles, California 90017.

On February 29, 2008, I served the foregoing document described as: **DEFENDANT THE BURLINGTON INSURANCE COMPANY'S REPLY TO JENNY WOLFES' OPPOSITION TO BURLINGTON'S MOTION TO STRIKE ALLEGATIONS OF AND PRAYER FOR PUNITIVE DAMAGES** on all parties as indicated below:

*Gerald Emanuel*  
**HINKLE, JACHIMOWICZ, POINTER & EMANUEL**  
2007 West Hedding Street, Suite 100  
San Jose, CA 95128  
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[X] by placing the true copies thereof enclosed in sealed envelopes addressed as stated above.

[X] **BY MAIL** as follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

[ ] **BY FEDERAL EXPRESS:** I caused said envelope to be delivered to a courier authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person to whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

[ ] **BY FACSIMILE** I sent such document from facsimile machine (213) 596-8039 on February 29, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (213) 596-8039 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed on the attached service list.

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 29, 2008, at Los Angeles, California



SHARON POLK